

x Colo. Dept. of Public H<sup>l</sup> <sup>th</sup>  
4300 Cherry Creek Dr. S.  
Denver, CO 80246

! EPTION# 2007000063610,  
07/02/2007 at 04:47:04 PM, 1 OF 5,  
TD Pgs: 0 Doc Type: COV  
Karen: Long, Adams County, CO

This property is subject to an Environmental Covenant held by the  
Colorado Department of Public Health and Environment  
Pursuant to section 25-15-321, C.R.S.

### ENVIRONMENTAL COVENANT

Colorado & Eastern Railroad Company ("Grantor"), acting by and through its President and pursuant to 40 USC Sec. 545 et seq., grants an Environmental Covenant ("Covenant") this 27<sup>th</sup> day of June, 2007, to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to §25-15-321 of the Colorado Hazardous Waste Act, §25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, Grantor is the owner of certain property commonly referred to as the Former 48<sup>th</sup> and Holly Landfill, located at 48<sup>th</sup> and Holly streets, Commerce City, COLORADO 80216, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to Sand Creek Industrial Superfund Site Record of Decision for OU 3 dated June 30, 1993, the Record of Decision for OU4 dated April 7, 1994 and the Record of Decision for OU6, incorporated in the June 30, 1993 Record of Decision for OU3 dated June 30, 1994, the Property is the subject of enforcement and remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq. ("CERCLA"), and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by prohibiting use of the Property until production of methane gas from the landfill has dropped to levels protective of any use of the Property or until it can be shown that a development can be made of the landfill and such development will not adversely affect the operation and maintenance of the landfill gas extraction system ("LFGES").

WHEREAS, Grantor desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind Grantor and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department and the United States Environmental Protection Agency.

NOW, THEREFORE, Grantor hereby grants this Environmental Covenant to the Department, with the United States Environmental Protection Agency as a third party beneficiary, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 10, below, which shall run with the Property in perpetuity and be binding on Grantor and all parties

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\$26.00

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having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means Grantor and any future record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

- 1) Use restrictions. Due to the presence of methane gas at levels dangerous to human health and the environment, and to protect the proper functioning of the LFGES, no activity of any kind is allowed on the Property, other than remedial activities approved by the U.S. EPA, and no use shall be made of the Property, until this Covenant is modified in accordance with paragraph 2, below.
- 2) Modifications. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:
  - a proposal to perform additional remedial work;
  - new information regarding the risks posed by the residual contamination;
  - information demonstrating that residual contamination has diminished;
  - information demonstrating that an engineered feature or structure is no longer necessary;
  - information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
  - other appropriate supporting information.
- 3) Conveyances. OWNER shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property.
- 4) Notice to Lessees. OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.
- 5) Notification for proposed construction and land use. OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
- 6) Inspections. The Department shall have the right of entry to the Property at reasonable times

Colorado & Eastern Railroad Company, acting by and through its President, has caused this instrument to be executed this 30<sup>th</sup> day of May, 2007.

**COLORADO & EASTERN RAILROAD COMPANY**

By: E.J. Lawrence, President  
E.J. Lawrence, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF FREMONT )

The foregoing instrument was acknowledged before me this 30 day of May, 2007, by E.J. Lawrence as President of Colorado & Eastern Railroad Company.

My commission expires: 6/16/2010  
Witness my hand and official seal.



[Signature]  
Notary Public

401 a Broadway, Denver, Co  
Address

Accepted by the Colorado Department of Public Health and Environment this 26<sup>th</sup> day of June, 2007.

By: Gary W. Baughman

Title: Director, HMEWMD

STATE OF Colorado )

) ss.

COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of June, 2007, by Gary W. Baughman, on behalf of the Colorado Department of Public Health and Environment.

My commission expires: 2-29-2008

Witness my hand and official seal.

Alma L. Fisher  
Notary Public

4300 Cherry Creek Blvd - Denver Co  
Address